

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986, (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 45 of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to implement regulations setting forth the procedures by which applicants may apply for licensure by endorsement, clarify the methods by which an applicant may meet the pre-professional experience requirements, and bring the regulations in line with the current standards in the practice of nutrition.

Proposed Rulemaking was published on November 11, 2005, at 52 DCR 10105. No written comments were received from the public in connection with the notice. These final rules will be effective upon publication of this notice in the D.C. Register.

Chapter 45 (Nutrition) of Title 17 (Business, Occupations & Professions)(May 1990) is amended as follows:

Section 4502.7 is amended to read as follows:

4502.7 An applicant who has received a master's or doctoral degree in nutrition from a university that was accredited by the ADA's Commission on Accreditation for Dietetics Education at the time the applicant graduated, shall be deemed to have met the pre-professional experience requirements of this section.

Section 4502.8 is amended to read as follows:

4502.8 An applicant who has been actively engaged in the practice of nutrition for not less than two (2) of the five (5) years immediately preceding the date of application and who meets the requirements of § 4502.1 of this chapter, shall be deemed to have met the pre-professional experience requirements of this section.

Section 4205.9 is amended to read as follows:

4502.9 An applicant who has been certified by the Certified Board for Nutrition Specialists as a Certified Nutrition Specialist (CNS), shall be deemed to have met the pre-professional experience requirements of this section.

Section 4502.10 is amended to read as follows:

- 4502.10 The Board may require that an applicant submit evidence that documents the nature of the course work completed.

A new section 4502.11 is added to read as follows:

- 4502.11 For purposes of this section, a quarter hour of academic credit shall equal two-thirds (2/3) of a semester hour.

Section 4503.1 is amended to read as follows:

- 4503.1 The Board may grant a license to practice nutrition to an applicant who has completed an educational program in a foreign country, which program is not-accredited pursuant to this section, if the applicant does as follows:
- (a) Meets all requirements of this chapter except for § 4502.1; and
 - (b) Demonstrates to the satisfaction of the Board that the applicant's education and training are substantially equivalent to the requirements of this subtitle and the Act in ensuring that the applicant is qualified to practice nutrition by submitting the documentation required by § 4502.6 or § 4503.2 of this chapter.

Section 4505.1 is amended to read as follows:

- 4505.1 To qualify for a license under this chapter, all applicants shall receive a passing score on a written examination developed by the Board on the practice of nutrition (the District examination).

Section 4505.2 is amended to read as follows:

- 4505.2 The District examination may include, but is not limited to, questions on the following subjects:
- (a) Human nutrition;
 - (b) Geriatric nutrition;
 - (c) Medical nutrition therapy;
 - (d) Nutrition in the life cycle;
 - (e) Food service management;

(f) Nutrition counseling; and

(g) Community nutrition.

Section 4505.3 is amended to read as follows:

4505.3 The Board shall administer the District examination for nutritionists at least four (4) times a year.

Section 4505.6 is amended to read as follows:

4505.6 To be eligible to take the District examination, an applicant shall submit proof satisfactory to the Board that he or she has met the educational and preprofessional experience training requirements of the Act.

Section 4505.7 is repealed.

Section 4505.8 is repealed.

Section 4505.9 is repealed.

Section 4506.3 is amended to read as follows:

4506.3 A continuing education credit shall be valid only if it is relevant to the field of Nutrition, Food Systems Management/Food service and is part of a program or activity approved by a nationally credentialed group and is accompanied by a signed certificate from the program director or accredited university/department.

Section 4506.5 is amended to read as follows:

4506.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11(2001) who submits an application to reactivate a license shall submit proof of having completed fifteen (15) hours of approved continuing education credit for each license year after December 1, 2000 that the applicant was in inactive status, up to a maximum of five (5) years, with at least thirty (30) of those hours having been completed in the two (2) years immediately preceding the date of applying for reactivation.

Section 4506.6 is amended to read as follows:

4506.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof of having completed fifteen (15) hours of approved continuing education credit for each year after December 1, 2000 that the

applicant was not licensed, up to a maximum of five (5) years, with at least thirty (30) of those hours having been completed in the two (2) years immediately preceding the date of applying for reinstatement.

Section 4507.2 is amended to read as follows:

- 4507.2 The Board may approve the following types of continuing education programs, if the programs meet the requirements of § 4507.3:
- (a) An undergraduate or graduate course given at an accredited college or university;
 - (b) A seminar related to the discipline of human nutrition;
 - (c) A training or technical assistance workshop in nutrition or a nutrition related field;
 - (d) An educational program given at a conference specifically related to the discipline of nutrition; and
 - (e) Nutrition related presentations or poster board sessions in professional meetings.

Section 4507.3 is amended to read as follows:

- 4507.3 To qualify for approval by the Board, a continuing education program shall meet the following requirements:
- (a) Be current and relevant in its subject matter;
 - (b) Be developed and taught by individuals with appropriate qualifications and credentials; and
 - (c) Be administered or approved by one of the following:
 - (1) A national, state, or local dietetics organization recognized by the Board;
 - (2) A health care facility accredited by the Joint Commission for the Accreditation of Hospitals; or
 - (3) A college or university approved by an accrediting body recognized by the Council on Postsecondary Accreditation or the Secretary of the United States Department of Education.

A new section 4509 is added to read as follows:

4509 LICENSURE BY ENDORSEMENT

4509.1 An applicant, holding an active license, in good standing, to practice nutrition in another state, shall in addition to meeting all the requirements of this chapter:

- (a) Submit a copy of his or her current license with the application; and
- (b) Obtain verification from each state in which the applicant holds or has ever held a professional health occupation license, that the license is current and in good standing, or if the license is no longer active, that it was in good standing immediately prior to its expiration. The licensure verification form must be sent directly to the Board, by the verifying Board.

4510 USE OF TITLE REGISTERED DIETITION

4510.1 An individual licensed under the Act to practice nutrition in the District of Columbia shall not use the title dietitian or registered dietitian unless the individual is licensed under the Act to practice dietetics in the District of Columbia.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 48 of Title 17 DCRMR (Business, Occupations & Professions) (May 1990). These rules provide standards of conduct for chiropractors in the practice of chiropractic in the District of Columbia as it relates to patient care and ethical conduct. Notice of Proposed Rulemaking was published in the D.C. Register on November 4, 2005 at 52 DCR 9893. No comments were received concerning these rules and no changes have been made since publication as a Notice of Proposed Rulemaking. These rules will be effective upon publication of this notice in the D.C. Register.

Chapter 48 (Chiropractic) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

A new section 4803 is added to read as follows:

4803 LICENSURE BY ENDORSEMENT

- 4803.1** An applicant who has completed educational requirements and holds an active license to practice in another jurisdiction for the past ten (10) years may apply for licensure by endorsement in the District of Columbia in the following manner:
- (a) If the applicant graduated prior to September 1987 the applicant shall have successfully passed parts 1 and 2 of the national exam; or
 - (b) If the applicant graduated prior to January 1, 1996 the applicant shall have successfully passed parts 1, 2, and 3 of the national examination; and
 - (c) The applicant shall successfully pass the District of Columbia Chiropractic Exam and the National Boards SPEC Exam.
- 4803.2** An applicant applying for licensure under this section shall also comply with § 4805.1.

A new section 4809 is added and reads as follows:

4809 STANDARDS OF CONDUCT

- 4809.1 A licensee shall not engage in sexual conduct with a patient with whom he or she has a patient-chiropractor relationship.
- 4809.2 A patient-chiropractor relationship exists unless:
- (a) Professional services are terminated and the patient receives written notice of the termination, whether the termination was initiated by the patient or licensee;
 - (b) The patient has been appropriately referred to another health professional in writing;
 - (c) The patient has accepted treatment by another health professional and the licensee documents the patient's chart prior to closing the file; or
 - (d) The patient has not received professional services for six (6) consecutive months and has not contacted the chiropractor for treatment.
- 4809.3 Sexual conduct includes the following:
- (a) Any behavior, gestures, or verbal or nonverbal expressions, which may reasonably be interpreted as seductive or sexual in nature; and
 - (b) Sexual comments or discussion about a patient or a former patient that are not related to chiropractic care or treatment.
- 4809.4 A patient shall be provided with privacy and examination conditions which prevent the exposure of the unclothed body of the patient unless it is necessary for the chiropractic exam or treatment.
- 4809.5 A licensee shall not engage in sexually harassing behavior in the practice of chiropractic of a single extreme act or multiple acts toward a patient, coworker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee or not.
- 4809.6 A licensee may have a chiropractor-patient relationship with a spouse, family member or an individual with whom he or she has a mutually committed relationship and perform chiropractic treatment, provided the treatment is within accepted standards of chiropractic care and the

performance of the services are not utilized to exploit the patient for sexual arousal or sexual gratification.

- 4809.7 A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-chiropractic relationship or in exchange for professional services.
- 4809.8 A licensee may not raise the following defenses to any action under this section:
- (a) The licensee was in love with or had affection for the patient; and
 - (b) The patient solicited or consented to the sexual contact with the licensee.
- 4809.9 A licensee shall exercise independent professional judgment in the treatment or evaluation of the patient regardless of whether the patient was referred by another healthcare provider.
- 4809.10 A licensee shall not advertise free or discounted services.
- 4809.11 A licensee shall prepare a written or verbal report for consultative purposes for another chiropractor, another healthcare provider, hospital or agency that currently provides or has provided service to the patient upon request.
- 4809.12 A licensee shall terminate a professional relationship with a patient shall in an appropriate and timely manner so as not to adversely impact the health of the patient.
- 4809.13 A licensee shall continue a professional relationship for emergency treatment with a current patient for a reasonable period of time to allow the patient time to obtain another healthcare provider.
- 4809.14 A licensee shall arrange for adequate coverage of his or her patients during absences when the chiropractor is unavailable to the patients.
- 4809.15 A licensee shall not:
- (a) Accept a patient for treatment or continue with treatment when the treatment is unnecessary and the patient cannot be reasonably expected to benefit from treatment within normal standards of chiropractic care.
 - (b) Attempt to treat or make misrepresentations about his or her ability to treat patients beyond his or her scope of expertise and/or area of specialty certification.

- (c) Refer a patient to a diagnostic or treatment facility or prescribe goods and services to be purchased from another facility, in which the chiropractor has a pecuniary interest, without first disclosing that interest in writing to the patient or third party payor.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), dated August 20, 1998, hereby gives notice of the adoption of the following amendment to Title 17 (Business, Occupations & Profession) (May 1990) of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendments is to establish licensure and practice regulations for the newly established profession of anesthesiologist assistant. Notice of Proposed Rulemaking was published in the D.C. Register on October 14, 2005 at 52 DCR 9161. Comments were received and considered during the 30-day comment period. However, they were not deemed sufficient by the Board of Medicine to warrant substantive changes. These final rules will be effective upon publication of this notice in the D.C. Register.

Proposed Amendment: Amend Title 17 (Business, Occupations & Professions) (May 1990) by adding a new Chapter 52 to read as follows:

CHAPTER 52: ANESTHESIOLOGIST ASSISTANTS**5200 GENERAL PROVISIONS**

5200.1 This chapter shall apply to applicants for and holders of a license to practice as an anesthesiologist assistant.

5200.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) shall supplement this chapter.

5201 TERM OF LICENSE

5201.1 Subject to § 5201.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31 of each even-numbered year.

5201.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birthdate of the holder of the license, or other date established by the Director.

5202 RENEWAL OF LICENSE

- 5202.1 The holder of a license to practice as an anesthesiologist assistant shall renew his or her license by submitting a completed application on the forms required by the Advisory Committee on Anesthesiologist Assistants and paying the required fees prior to the expiration of the license.
- 5202.2 The Board's staff shall mail out applications for renewal at least sixty (60) days prior to the date the license expires.
- 5202.3 The license holder shall have the burden of notifying the Board if a renewal notice is not received.
- 5202.4 A license holder shall notify the Board in writing of a change of home or business address within thirty (30) days after the change.
- 5202.5 A license holder applying for renewal of a license to practice as an anesthesiology assistant shall submit evidence of current national certification or recertification as an Anesthesiologist Assistant – Certified (AA-C), as applicable, by the National Commission for Certification of Anesthesiologist Assistants, or its successor.
- 5202.6 A license holder applying for renewal of a license who fails to submit proof of having completed the requirement as set forth in §5202.5 by the date the license expires may renew the license within sixty (60) days after the expiration by submitting the required documents and paying the required late fees.
- 5202.7 Upon submitting the required documents and paying the required late fees, the license holder shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documents and fees.
- 5202.8 If a license holder applying for renewal of a license fails to submit proof of completion of the requirements set forth in §5202.5 or pay the late fee within sixty (60) days after the expiration of the license holder's license, the license shall be considered to have lapsed on the date of expiration and the license holder shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.
- 5202.9 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew the license after expiration, if the license holder's failure to submit proof of the requirements or pay the late fee was for good cause. As used in this section, "good cause" includes the following:

- (a) Serious and protracted illness of the license holder;

- (b) The death or serious and protracted illness of a member of the license holder's immediate family; or
- (c) Active military deployment pursuant to 17 DCMR § 4015.

5203 LICENSURE REQUIREMENTS

5203.1 Except as otherwise provided in this subtitle an applicant shall furnish proof satisfactory to the Board in accordance with § 504 of the Act, D.C. Official Code §3-1205.04 that the applicant has met the following requirements:

- (a) Earned a degree or certification from an anesthesiologist assistant program accredited by the Commission on Accreditation of Allied Health Educational Programs, or by the Commission's successor; and
- (b) Obtained current certification by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization, that indicates that the applicant has passed the national examination.

5203.2 Pursuant to § 5202.1(b), an application for licensure as an anesthesiologist assistant may be filed by an individual who has taken the national certification examination but has not yet received the results.

5204-5207 [RESERVED]**5208 CONTINUING EDUCATION REQUIREMENTS**

5208.1 This section shall apply to applicants for the renewal of a license and does not apply to applicants for an initial license by examination or endorsement, nor does it apply to applicants for the first renewal of a license granted by examination.

5208.2 A licensee applying for renewal shall meet continuing education requirements by demonstrating that he or she has been recertified by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization.

5208.3 A licensee applying for renewal of a license who fails to submit proof of the standards in § 5208.2 by the date the license expires may renew the license within sixty (60) days after the expiration by submitting proof and by paying the required late fees.

5208.4 Upon submitting proof and paying the required late fees, the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documents and fees.

5209 – 5212 [RESERVED]

5213 SCOPE OF PRACTICE

5213.1 An anesthesiologist assistant shall, in accordance with this chapter and the Act, have the authority to perform the following tasks:

- (a) Obtain a comprehensive patient history, perform relevant elements of a physical examination, and present the history to the supervising anesthesiologist;
- (b) Pretest and calibrate anesthesia delivery systems and obtain and interpret information from the systems and monitors, in consultation with an anesthesiologist;
- (c) Assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;
- (d) Establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;
- (e) Administer intermittent vasoactive drugs and start and adjust vasoactive infusions;
- (f) Administer anesthetic drugs, adjuvant drugs, and accessory drugs, including narcotics;
- (g) Assist the supervising anesthesiologist with the performance of epidural anesthetic procedures, spinal anesthetic procedures, and other regional anesthetic techniques;
- (h) Administer blood, blood products, and supportive fluids;
- (i) Provide assistance to a cardiopulmonary resuscitation team in response to a life-threatening situation;
- (j) Monitor, transport, and transfer care to appropriate anesthesia or recovery personnel;
- (k) Participate in administrative, research, and clinical teaching activities, as authorized by the supervising anesthesiologist; and

- (l) Perform such other tasks that an anesthesiologist assistant has been trained and is proficient to perform.

5213.2 An anesthesiologist assistant shall not perform the following tasks:

- (a) Prescribe any medications or controlled substances;
- (b) Practice or attempt to practice unless under the supervision of an anesthesiologist who is immediately available for consultation, assistance, and intervention;
- (c) Practice or attempt to administer anesthesia during the induction or emergence phase without the personal participation of the supervising anesthesiologist; or
- (d) Administer any drugs, medicines, devices, or therapies the supervising anesthesiologist is not qualified or authorized to prescribe.

5214 SUPERVISING ANESTHESIOLOGIST

5214.1 A supervising anesthesiologist shall be immediately available to participate directly in the care of the patient whom the anesthesiologist assistant and the supervising anesthesiologist are jointly treating, and shall at all times accept and be responsible for the oversight of the health care services rendered by the anesthesiologist assistant.

5214.2 A supervising anesthesiologist shall be present during the induction and emergence phases of a patient to whom anesthesia has been administered.

5214.3 A supervising anesthesiologist may supervise up to three (3) anesthesiologist assistants at any one time during normal circumstances, and up to four (4) anesthesiologist assistants at any one time during emergency circumstances, consistent with federal rules for reimbursement of anesthesia services.

5214.4 No faculty member of an anesthesiologist assistants program shall concurrently supervise more than two (2) anesthesiologist assistant students who are delivering anesthesia.

5299 DEFINITIONS

5299.1 As used in this chapter the following terms have the meanings ascribed:

Anesthesiologist Assistant - a person licensed to practice as an anesthesiologist assistant under the Act.

Anesthesiologist - a physician who has completed a residency in anesthesiology approved by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and who is currently licensed to practice medicine in the District of Columbia.

Assist - to carry out procedures as requested by the supervising anesthesiologist, provided that the requested procedures are within the anesthesiologist assistant's training and scope of practice, is medically directed, and defined by the supervising anesthesiologist in conformance with acceptable standards for anesthesia care and, approved by the hospital or ambulatory surgical facility medical staff.

Board - the Board of Medicine, established by § 203(a) of the Act, D.C. Code § 3-1202.03(a)(1) (2001).

Committee - the Advisory Committee on Anesthesiologist Assistants, established by § 203 (c-1) of the Act. D.C. Official Code § 3-1202.03(c-1) (2001).

Immediately available - means the supervising anesthesiologist is:

- (a) Present in the building or facility in which anesthesia services are being provided by assistant; and
- (b) Able to directly provide assistance to the anesthesiologist assistant in providing anesthesia services to the patient in accordance with the prevailing standards of:
 - (1) Acceptable medical practice;
 - (2) The American Society of Anesthesiologists' guidelines for best practice of anesthesia in a care team model; and
 - (3) Any additional requirements established by the Board of Medicine through a formal rulemaking process.

Supervision - directing and accepting responsibility for the anesthesia services rendered by an anesthesiologist assistant in a manner approved by the Board of Medicine.

5299.2 The definitions in § 4099 of chapter 40 of this title and the Act are incorporated by reference into and are applicable to this chapter.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997 hereby gives notice of the adoption of an amendment of section 934 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Physical Therapy Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for physical therapy services provided to participants in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). The amendment broadens the provider qualification standards to authorize therapists in private practice to provide physical therapy services. These rules also establish reimbursement rates for physical therapy services.

The Council of the District of Columbia and the Centers for Medicare and Medicaid Services have approved the modification to the Waiver to permit therapists in private practice to provide physical therapy services to Waiver participants. The standards for therapists in private practice were developed based on requirements set forth in the Medicare program.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on November 4, 2005 (52 DCR 9922). No comments on the proposed rules were received. No substantive changes have been made. This notice shall become effective one day after publication of this notice on the *D.C. Register*.

Section 934 of Title 29 DCMR is amended to read as follows:

SECTION 934 PHYSICAL THERAPY SERVICES

- 934.1 Physical therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.
- 934.2 To be eligible for reimbursement, physical therapy services shall be:
- (a) Ordered by a physician; and
 - (b) Reasonable and necessary to the treatment of the consumer's illness or injury, or to the restoration or maintenance of function affected by the injury or illness.

- 934.3 Each person providing physical therapy services shall be employed by a home health agency or be a physical therapist in private practice. The home health agency or therapist in private practice shall have a current Medicaid Provider Agreement that authorizes the service provider to bill for physical therapy services.
- 934.4 In addition to all other requirements set forth in this section, each physical therapist in private practice shall meet all of the conditions as set forth below:
- (a) Maintain a private office, even if services are always furnished in the consumer's home;
 - (b) Meet all state and local licensure laws and rules;
 - (c) Maintain at least one million dollars in liability insurance;
 - (d) Ensure that services provided are consistent with the individual habilitation plan (IHP) or individual service plan (ISP);
 - (e) If services are furnished in a private practice office space, that space shall be owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice; and
 - (f) Assistants and aides shall be personally supervised by the physical therapist and employed directly by the physical therapist, by the partnership group to which the physical therapist belongs, or by the same private practice that employs the physical therapist. Personal supervision requires the physical therapist to be in the room during the performance of the service.
- 934.5 Each person providing physical therapy services shall be a physical therapist who meets all of the following requirements:
- (a) Is a graduate of a physical therapy curriculum approved by the American Physical Therapy Association or the Committee on Allied Health Education and Accreditation of the American Medical Association;
 - (b) Has a minimum of two years of experience as a physical therapist;
 - (c) Be at least eighteen (18) years of age;
 - (d) Be acceptable to the consumer;
 - (e) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;

- (f) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
- (g) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD skin test or documentation from a physician stating that the person is free from communicable disease;
- (h) Have the ability to read and write the English language; and
- (i) Be able to recognize an emergency and be knowable about emergency procedures.

934.6

The duties of each person providing physical therapy services shall include, at a minimum, the following:

- (a) Preparing an initial assessment and evaluation of the consumer's medical histories;
- (b) Maintaining ongoing involvement and consultation with other service providers;
- (c) Ensuring that the consumer's needs are met in accordance with the IHP or ISP;
- (d) Measuring the consumer's strength, range of motion, balance and coordination, posture, muscle performance, respiration, and motor functions;
- (e) Developing treatment plans that describe treatment strategies, purposes, and anticipated outcomes;
- (f) Providing therapeutic exercises, gait training, and range of motion to help restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities;
- (g) Providing ultrasound, short-wave, microwave, diathermy, hot packs, infrared, paraffin, and whirlpool therapies;
- (h) Providing consultation and instruction to the consumer, family or other caregivers;
- (i) Recording progress notes on each visit;
- (j) Conducting periodic examinations and modifying treatments for the consumer, when necessary;

(k) Establishing a home exercise program; and

(l) Monitoring the consumer's outcomes to determine if the therapeutic goals are met.

934.7 The physical therapist shall be responsible for providing written documentation in the consumer's clinical record of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals that demonstrate that the services are and continue to be reasonable and necessary.

934.8 Physical therapy services shall be authorized and provided in accordance with each consumer's IHP or ISP.

934.9 The home health agency and the physical therapist in private practice shall maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration, assessments for physical therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation for at least six (6) years after the consumer's date of discharge.

934.10 The home health agency shall ensure that the physical therapist is properly supervised and that the services provided are consistent with the consumer's IHP or ISP.

934.11 Services shall not exceed the authorized frequency and duration as authorized for physical therapy services in the IHP or ISP.

934.12 The reimbursement rate for physical therapy services shall be sixty-five dollars (\$65.00) for an initial assessment and \$65.00 per follow-up visit. The rate paid for the initial assessment includes the duration of time that it takes for each provider to complete a thorough assessment of the consumer and to develop a plan of care based on the identified needs.

934.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Clinical Record -- A comprehensive compilation of medical and other data that identifies the consumer and justifies and describes the diagnosis and treatment of the consumer.

Consumer – An individual who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Home Care Agency – Shall have the same meaning as “home care agency” as set forth in the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, § 44-501 et. Seq.), and implementing rules.

Individual Habilitation Plan (IHP) – Shall have the same meaning as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-37; D.C. Official Code, § 7-1304.03).

Individual Service Plan - The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Physician – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 et seq.) or licensed as a physician in the jurisdiction where services are provided.

Physical Therapist - A person who is licensed or authorized to practice physical therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201, et seq.) or licensed as a physical therapist in the jurisdiction where services are provided.

Private Practice – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the health care team that summarizes facts about a consumer's care and response to treatment during a given period of time.

DEPARTMENT OF HEALTH
NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a Medical Assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, effective January 13, 1997 and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment of section 935 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Occupational Therapy Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for occupational therapy services provided by a licensed occupational therapist to participants in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). The amendment broadens the provider qualification standards to authorize therapists in private practice to provide occupational therapy services. These rules also establish the Medicaid reimbursement rates for occupational therapy services.

The Council of the District of Columbia and the Centers for Medicare and Medicaid Services have approved the modification to the Waiver to permit therapists in private practice to provide occupational therapy services to Waiver participants. The standards for therapists in private practice were developed based on requirements set forth in the Medicare program.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on November 4, 2005 (52 DCR 9928). No comments on the proposed rules were received. No substantive changes have been made. This notice shall become effective one day after publication of this notice in the *D.C. Register*.

Section 935 of Title 29 DCMR is amended to read as follows:

SECTION 935 OCCUPATIONAL THERAPY SERVICES

- 935.1 Occupational therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.
- 935.2 To be eligible for reimbursement, occupational therapy services shall be:
- (a) Ordered by a physician; and
 - (b) Reasonable and necessary to the treatment of the consumer's illness or injury, or to the restoration or maintenance of function affected by the injury or illness.

935.3 Each person providing occupational therapy services shall be employed by a home health agency or be an occupational therapist in private practice. The home health agency or therapist in private practice shall have a current District of Columbia Medicaid Provider Agreement that authorizes the service provider to bill for occupational therapy services.

935.4 In addition to all other requirements set forth in this section, each occupational therapist in private practice shall meet all of the conditions as set forth below:

- (a) Maintain a private office, even if services are always furnished in the consumer's home;
- (b) Meet all state and local licensure laws and rules;
- (c) Maintain at least one million dollars in liability insurance;
- (d) Ensure that services provided are consistent with the individual habilitation plan (IHP) or individual service plan (ISP);
- (e) If services are furnished in a private practice office space, that space shall be owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice; and
- (f) Assistants and aides shall be personally supervised by the occupational therapist and employed directly by the occupational therapist, by the partnership group to which the occupational therapist belongs, or by the same private practice that employs the occupational therapist. Personal supervision requires the occupational therapist to be in the room during the performance of the service.

935.5 Each person providing occupational therapy services shall be an occupational therapist who meets all of the following requirements:

- (a) Is a graduate of an occupational therapy curriculum accredited jointly by the American Occupational Therapy Association, the Committee on Allied Health Education and the American Medical Association;
- (b) Has a minimum of two years of experience as an occupational therapist;
- (c) Be at least eighteen years of age;
- (d) Be acceptable to the consumer;

- (e) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
- (f) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
- (g) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD skin test or documentation from a physician stating that the person is free from communicable disease;
- (h) Have the ability to read and write the English language;
- (i) Have the ability to communicate with the consumer; and
- (j) Be able to recognize an emergency and be knowledgeable about emergency procedures.

935.6 The goals of each person providing occupational therapy services shall include, at a minimum, improving the following:

- (a) The consumer's level of independence in activities of daily living;
- (b) The consumer's level of sensory and integrative functions; and
- (c) The consumer's physical functions, basic motor skills and reasoning abilities.

935.7 The duties of the occupational therapist shall include, at a minimum, the following:

- (a) Evaluating each consumer's ability to manage normal daily functions that are threatened or impaired by mental retardation, developmental deficits, physical disability and mental illness;
- (b) Maintaining ongoing involvement and consultation with other service providers;
- (c) Ensuring that the consumer's needs are met in accordance with the IHP or ISP;
- (d) Developing treatment plans for consumers that describe treatment strategy, purpose and anticipated outcomes;
- (e) Designing, fabricating, and fitting orthotic or self help devices for the consumer such as wheelchairs, splints, and aids for eating and dressing;

- (f) Providing vocational and pre-vocational assessment and training such as learning how to use computer-aided equipment and other assistive technology;
- (g) Establishing a home exercise program for the consumer;
- (h) Utilizing task-oriented activities for consumers to prevent or correct physical or emotional disabilities and to enhance developmental and functional skills;
- (i) Providing consultation and instruction to the consumer, family or other caregivers;
- (j) Recording progress notes for each visit with the consumer;
- (k) Conducting periodic examinations and modifying treatments for the consumer, when necessary; and
- (l) Monitoring the consumer's outcomes to determine if the therapeutic goals are met.

- 935.8 The occupational therapist shall be responsible for providing written documentation in the consumer's clinical record of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals that demonstrate that the services are and continue to be reasonable and necessary.
- 935.9 Occupational therapy services shall be authorized and provided in accordance with each consumer's IHP or ISP.
- 935.10 The home health agency and the occupational therapist in private practice shall maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration, assessments for occupational therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation for at least six (6) years after the consumer's date of discharge.
- 935.11 The home health agency shall ensure that the occupational therapist is properly supervised and that the services provided are consistent with the consumer's IHP or ISP.
- 935.12 Services shall not exceed the authorized frequency and duration for occupational therapy services as authorized in the IHP or ISP.
- 934.13 The reimbursement rate for occupational therapy services shall be sixty dollars (\$60.00) for the initial assessment and \$60.00 for a follow-up visit. The rate paid for the initial assessment includes the duration of time that it takes for each

provider to complete a thorough assessment of the consumer and to develop a plan of care based on the identified needs.

935.99

DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Clinical Record – A comprehensive compilation of medical and other data that identifies the consumer and justifies and describes the diagnosis and treatment of the consumer.

Consumer – An individual who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Home Care Agency – Shall have the same meaning as “home care agency” as set forth in the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, § 44-501 et. seq.), and implementing rules.

Individual Habilitation Plan (IHP) – Shall have the same meaning as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-37; D.C. Official Code, § 7-1304.03).

Individual Service Plan - The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Occupational Therapist - A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 2-1201, *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are provided.

Physician – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 et. Seq.) or licensed as a physician in the jurisdiction where services are provided.

Private Practice – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. Private practice does not include individuals when they are working as employees of a hospital,

nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has an Medicaid provider agreement which includes occupational therapy services in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the health care team that summarizes facts about a consumer's care and response to treatment during a given period of time.

COMMISSION ON JUDICIAL DISABILITIES AND TENURE

NOTICE OF FINAL RULEMAKING

The District of Columbia Commission on Judicial Disabilities and Tenure (the Commission) hereby amends its Rules, Title 28, D.C.M.R., Chapter 20. This amendment to the Commission's Rules is promulgated pursuant to D.C. Code §11-1525(a)(2001) and §431(d)(3), of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, but does not purport to restate all applicable procedural and substantive provisions of the pertinent statutes. The amended rule is §2010.3. It shall be effective immediately upon publication in the D.C. Register. D.C. Code §11-1525(a)(2001) provides that the Commission is an independent agency, therefore, prior public notice and hearings are not required on the subject of rules adopted by the Commission.

- | | |
|--------|--|
| 2000 | COMMISSION ON JUDICIAL DISABILITIES AND TENURE |
| 2000.1 | The Commission on Judicial Disabilities and Tenure (also referred to in this chapter as "the Commission") is established and shall be operated in accordance with the provisions of Pub. L. 91-368 (D.C. Code, §11-1521, <u>et seq.</u>). |
| 2000.2 | The Chairperson of the Commission shall be elected annually by the members of the Commission from among the members of the Commission. |
| 2000.3 | The Commission may select a Vice Chairperson and other officers as the Commission, from time to time, may deem appropriate. |
| 2000.4 | The Chairperson shall preside at each meeting of the Commission. |
| 2000.5 | Officers, special counsel, and other personnel who are selected by the Commission shall perform the duties assigned to them by the Commission. |
| 2000.6 | The Commission may retain medical or other experts to assist it. |

- 2001 TRANSACTION OF COMMISSION BUSINESS
- 2001.1 The Commission shall act only at a meeting. The actions of the Commission may be implemented by any appropriate means directed by the Commission.
- 2001.2 Meetings of the Commission shall be held at times agreed upon by the members of the Commission, or upon call by the Chairperson, or by a majority of the members of the Commission and after notice to all members of the Commission.
- 2001.3 Minutes shall be kept of each meeting of the Commission. The minutes shall record the names of those present, the actions taken, and any other matters that the Commission may deem appropriate.
- 2001.4 A quorum for Commission action shall consist of four (4) members.
- 2001.5 Commission action shall be taken only upon concurrence of four (4) members; Provided, that the concurrence of five (5) members shall be required to suspend a judge from all or part of his or her judicial duties pursuant to §432(c)(3) of the Self-Government Act.
- 2001.6 The Chairperson, Vice Chairperson, Acting Chairperson, or a member designated by one of them may carry out the routine of Commission business (such as the granting of postponements pursuant to this chapter, authorization of preliminary inquiry into complaints or information regarding a judge's conduct or health, and authorization of informal and non-determinative communications with a judge or the judge's counsel).
- 2002 PHYSICAL EXAMINATIONS AND MEDICAL INFORMATION
- 2002.1 At the Commission's request, a judge shall submit to a physical or mental examination by a physician designated by the Commission after consultation with the judge. The examination and report shall be made at the Commission's expense.
- 2002.2 The physician's report shall be given in writing to the Commission.
- 2002.3 At the Commission's request, a judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any medical person, medical institution, or other facility regarding the judge's physical or mental condition.

- 2002.4 The failure of a judge to submit to a physical or mental examination or to provide waivers and releases required under this section may be considered by the Commission adversely to the judge.
- 2002.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the judge at his or her request.
- 2003 FINANCIAL REPORTS
- 2003.1 Each judge shall file with the Commission on or before the first (1st) day of June of each year, on forms provided by the Commission, the reports of personal financial interest required by D. C. Code, §11-1530 for the preceding calendar year.
- 2003.2 The Commission from time to time may require a judge to file pertinent supplemental information.
- 2004 COMPLAINTS
- 2004.1 Subject to the confidentiality provisions of §2044, the Commission may receive information or a complaint from an individual or an organization regarding a judge's conduct or health.
- 2005 PRECEDENTS
- 2005.1 The provisions of this section shall apply to determinations by the Commission of grounds for removal under §432(a)(2) of the Self-Government Act, and to evaluations by the Commission of judges who are candidates for renomination.
- 2005.2 Each judge shall be deemed to be on notice of the following; Provided, that copies of the decisions, evaluations, reports, or communications have been filed by the Commission with the Chief Judge of each court:
- (a) The Commission's decisions in proceedings;
 - (b) The Commission's evaluations of judges who have been candidates for re-nomination;
 - (c) The annual reports of the Commission; and

- (d) Any communication by the Commission to either of the Chief Judges of the courts of the District of Columbia specifying that the judges are to take notice of the communication.

2005.3 Expressions by the Commission in the decisions, evaluations, and communications listed in §2005.2 shall be pertinent precedents to be taken into account by the Commission.

2005.4 Each judge shall be deemed to be on notice of provisions promulgated by the Advisory Committee on Judicial Activities of the Judicial Conference of the United States regarding the Code of Judicial Conduct for United States Judges.

2005.5 Insofar as the opinions of the Advisory Committee on Judicial Activities deal with provisions of the Code of Judicial Conduct that are similar to requirements applicable to judges of District of Columbia courts, the Commission shall regard them as persuasive.

§§2006 – 2009: RESERVED

2010 INVESTIGATIONS

2010.1 The Commission may investigate to determine whether a proceeding should be instituted on charges of misconduct, failure to perform judicial duties, or disability, upon receiving information regarding the following by complaint or otherwise:

- (a) That a judge may have been guilty of willful misconduct in office or willful and persistent failure to perform his or her judicial duties; or
- (b) That a judge engaged in other conduct prejudicial to the administration of justice or which brings the judicial office into disrepute; or
- (c) That a judge may have a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his or her judicial duties.

2010.2 The investigation may be carried out in a manner that the Commission deems appropriate, including the taking of evidence at Commission meetings or by deposition.

- 2010.3 (a) A respondent judge shall cooperate with the Commission in the course of its investigation and shall, within such reasonable time as the Commission may require, respond to any inquiry concerning the conduct of the judge, whether the questioned conduct occurred during the course of a concluded case or matter, a pending case or matter or in an extrajudicial context. The failure or refusal of the judge to respond may be considered a failure to cooperate.
- (b) The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or argument, or other uncooperative behavior may be considered a violation of Canon 1 of the Code of Judicial Conduct and, therefore, an independent ground for disciplinary action.
- 2010.4 After investigation, if the Commission determines that a proceeding should not be instituted, the Commission shall so inform the judge if he or she was previously informed of the pendency of the complaint by either the complainant or the Commission and shall give notice to the complainant either that there is insufficient cause to proceed or that the complaint poses a legal issue over which the Commission has no jurisdiction, as appropriate.
- 2011 NOTICE OF A PROCEEDING
- 2011.1 If, after investigation, the Commission determines that a proceeding is warranted, the Commission, except for good reason, shall notify the judge of its determination.
- 2011.2 If immediately requested by a judge who has been notified under §2011.1, the Commission, or a member of the Commission, or a special counsel may, if the circumstances warrant, confer with the judge for the purpose of considering whether the matter may be disposed of without a proceeding.
- 2011.3 If the matter is disposed of without a proceeding, notice shall be given to the complainant that the matter has been resolved.
- 2011.4 If notification under §2011.1 is not given or, if given, if a disposition without a proceeding does not result, the Commission shall issue a written notice to the judge advising him or her of the institution of a proceeding to inquire into the charges.

2011.5 Each proceeding shall be titled as follows:

BEFORE THE DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE

Inquiry Concerning A Judge, No. _____

2011.6 The notice of proceeding shall specify concisely the charges and the alleged basis for the charges, and shall advise the judge of the following rights:

- (a) The right to counsel; and
- (b) The right to file a written answer to the notice within twenty (20) days after service of the notice.

2011.7 The notice shall be served by personal service upon the judge.

2011.8 If it appears to the Chairperson of the Commission upon affidavit that, after reasonable effort for a period of ten (10) days, personal service could not be made, service may be made upon the judge by mailing the notice by registered or certified mail, addressed to the judge at his or her chambers or at his or her last known residence.

2012 OFFICIAL RECORD

2012.1 The Commission shall keep a complete record of each proceeding.

2013 ANSWER AND HEARING DATE

2013.1 Within twenty (20) days after service of a notice of proceeding, the judge may file an answer with the Commission.

2013.2 Upon the filing of an answer, unless good reason to the contrary appears in the answer, or if no answer is filed within the time for its filing, the Commission shall order a hearing to be held before it concerning the matters specified in the notice of proceeding.

2013.3 The Commission shall set a time and place for the hearing and shall mail a notice of the hearing time and place to the judge by registered or certified mail addressed to the judge at his or her chambers at least thirty (30) days prior to the date set.

2013.4 The Chairperson may extend the time either for filing an answer or for the commencement of a hearing for periods not to exceed thirty (30) days in the aggregate.

2013.5 The notice of proceeding and the answer shall constitute the pleadings. No further pleadings or motions shall be filed.

2013.6 The judge shall include in the answer all procedural and substantive defenses and challenges which the judge desires the Commission to consider.

2013.7 The Commission may rule on the defenses and challenges at the outset of the hearing or may take them under advisement to be determined during, at the close of, or at a time subsequent to the hearing.

2014 AMENDMENT OF NOTICE OF PROCEEDING

2014.1 The Commission at any time prior to its final decision in a proceeding may amend the notice of proceeding to conform to proof or otherwise.

2014.2 The judge shall be given a reasonable time to answer an amendment and to present his or her defense against any matter charged in an amendment.

2015 HEARINGS

2015.1 At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

2015.2 The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of facts alleged to constitute grounds for removal or involuntary retirement.

2015.3 The hearing shall be held before the Commission.

2015.4 Evidence at a hearing shall be received only when a quorum of the Commission is present.

2015.5 A verbatim record of each hearing shall be kept.

2016 PROCEDURAL RIGHTS OF JUDGES

2016.1 In a proceeding the judge shall be admitted to all hearing sessions.

- 2016.2 A judge shall be given every reasonable opportunity to defend himself or herself against the charges, including the introduction of evidence, representation by counsel, and examination and cross-examination of witnesses.
- 2016.3 A judge shall have the right to the issuance of subpoenas for attendance of witnesses at the hearing to testify or produce material evidentiary matter.
- 2016.4 A copy of the hearing record of a proceeding shall be provided to the judge at the expense of the Commission.
- 2016.5 If it appears to the Commission at any time during a proceeding that the judge is not competent to act for himself or herself, the Commission shall seek the appointment of a guardian ad litem unless the judge has a legal representative who will act for him or her.
- 2016.6 The guardian ad litem or legal representative may exercise any right and privilege and make any defense for the judge with the same force and effect as if exercised or made by the judge, if he or she were competent. Whenever the provisions of this chapter provide for notice to the judge, that notice shall be given to the guardian ad litem or legal representative.
- 2017 OATHS OR AFFIRMATIONS
- 2017.1 Each witness who appears before the Commission in an investigation or proceeding shall swear or affirm to tell the truth and not to disclose the nature of the investigation or of the proceeding or the identity of the judge involved unless or until the matter is no longer confidential under the provisions of this chapter.
- 2017.2 The provisions of §2017.1 shall apply to witnesses at Commission meetings or testifying by deposition. Individuals interviewed by a member of the Commission or its staff shall be requested to keep the matter confidential.
- 2017.3 Each member of the Commission shall be authorized to administer oaths or affirmations to all witnesses appearing before the Commission.
- 2018 SUBPOENAS AND ORDERS FOR INSPECTION OF DOCUMENTS
- 2018.1 In aid of any investigation or proceeding, the Commission may order and otherwise provide for the inspection of papers, books, records, accounts, documents, transcriptions, and other physical things, and may issue subpoenas for attendance of witnesses and for the production of papers,

books, records, accounts, transcriptions, documents, or other physical things, and testimony.

- 2018.2 Whenever a person fails to appear to testify or to produce any papers, books, records, accounts, documents, transcriptions, or other physical things, as required by a subpoena issued by the Commission, the Commission may petition the United States District Court for the district in which the person may be found for an order compelling him or her to attend, testify, or produce the writings or things required by subpoena, pursuant to D.C. Code, §11-1527(c)(3).

2019 DEPOSITIONS

- 2019.1 The Commission may order the deposition of any person in aid of any investigation or proceeding.

- 2019.2 The deposition shall be taken in the form prescribed by the Commission, and shall be subject to any limitations prescribed by the Commission.

- 2019.3 To compel a deposition, the Commission may petition the Superior Court of the District of Columbia requesting an order requiring a person to appear and testify and to produce papers, books, records, accounts, documents, transcriptions, or other physical things before a member of the Commission or a special counsel or other officer designated by the Commission.

- 2019.4 The petition to the Superior Court shall state, without identifying the judge, the general nature of the pending matter, the name and residence of the person whose testimony or other evidence is desired, and any special directions the Commission may prescribe.

- 2019.5 Depositions shall be taken and returned in the manner prescribed by law for civil actions.

2020 GRANTS OF IMMUNITY

- 2020.1 Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to testify or produce papers, books, records, accounts, documents, transcriptions, or other physical things and the Commission determines that his or her testimony, or production of evidence, is necessary, it may order the witness to testify or to produce the evidence under a grant of immunity against subsequent use of the testimony or evidence, as prescribed by D.C. Code, §11-1527(c)(2).

2021 COMPENSATION OF WITNESSES

2021.1 Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for his or her attendance the fees prescribed by D.C. Code, §15-714 for witnesses in civil cases.

2021.2 All witnesses shall receive the allowances prescribed by D.C. Code, §15-714 for witnesses in civil cases.

2022 FINDINGS OF FACT AND DECISIONS

2022.1 Within ninety (90) days after the conclusion of the hearing or the conclusion of any reopened hearing in a proceeding, the Commission shall make written findings of fact, conclusions of law, and a determination regarding the conduct or health of the judge.

2022.2 The findings, conclusions, and determination shall be set forth in an order, as the Commission deems appropriate. A copy of the order shall be sent to the judge and his or her counsel, if any.

2022.3 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established and orders removal or retirement, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.4 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established, but that removal or retirement should not be ordered, it shall include in its decision a statement of reasons for not so ordering, and, as it deems appropriate under the circumstances, shall order that the record of the proceeding either shall be made public or shall remain confidential.

2022.5 If the record of the proceedings remains confidential under §2022.4, and if the judge within ten (10) days after a copy of the decision is sent to him or her requests that the record be made public, the Commission shall so order.

2022.6 If the record is to be made public, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.7 When a decision and transcript of the record are filed with the District of Columbia Court of Appeals pursuant to §§2022.3 or 2022.6, the Commission shall provide the judge with a copy of the entire record at the expense of the Commission except for those portions that it previously

may have provided to him or her, and it shall notify the Chief Judge of the judge's court of its decision.

2022.8 If the Commission determines that grounds for removal or involuntary retirement of a judge have not been established, it shall ask the judge whether he or she desires the Commission to make public disclosure of information pertaining to the nature of its investigation, its hearing, findings, determination, or other facts related to its proceedings.

2022.9 If the judge, in writing, requests disclosure under §2022.8, the Commission shall make the information available to the public except for the identity of an informant or complainant other than a witness at the hearing.

2023 CONVICTION OF A FELONY

2023.1 The Commission shall not file in the District of Columbia Court of Appeals an order of removal certifying the entry of a judgment of a criminal conviction, as provided in §432(a)(1) of the Self-Government Act, without giving to the judge concerned at least ten (10) days notice of its intention to do so.

§§2024 – 2029: RESERVED

2030 EVALUATION OF CANDIDATES FOR RENOMINATION

2030.1 Not less than six (6) months prior to the expiration of his or her term of office, a judge seeking reappointment shall file with the Commission a declaration in writing of candidacy for reappointment.

2030.2 Judges shall be urged to file the declaration well in advance of the six (6) month minimum, and shall, if possible, file the declaration nine (9) months prior to the expiration of his or her term.

2030.3 Not less than six (6) months prior to expiration of his or her term, the candidate shall submit to the Commission a written statement, including illustrative materials, reviewing the significant aspects of his or her judicial activities that the judge believes may be helpful to the Commission in its evaluation of his or her candidacy.

2031 EVALUATION STANDARDS

2031.1 A judge declaring candidacy for reappointment shall be evaluated by the Commission through a review of the judge's performance and conduct during the judge's present term of office.

2031.2 The evaluation categories shall include the following:

- (a) Well Qualified – The candidate's work product, legal scholarship, dedication, efficiency, and demeanor are exceptional, and the candidate's performance consistently reflects credit on the judicial system.
- (b) Qualified – The candidate satisfactorily performs the judicial function or, if there are negative traits, they are overcome by strong positive attributes.
- (c) Unqualified – The candidate is unfit for further judicial service.

2032 COMMUNICATIONS FROM INTERESTED PERSONS

2032.1 The lay public, the bar, court personnel, and other judges may communicate to the Commission, preferably in writing, any information they may have that is pertinent to the candidacy of a judge for renomination.

2033 INTERVIEWS WITH INFORMED PERSONS

2033.1 Ordinarily the Commission shall interview the Chief Judge of the candidate's court.

2033.2 In addition, the Commission may seek pertinent information by interviews with others conducted by the full Commission, by one (1) or more members, or by a special counsel or others of its staff.

2034 DISCLOSURE OF TAX INFORMATION

2034.1 At the Commission's request, the candidate shall execute all waivers and releases necessary for the Commission to secure tax information concerning him or her, including copies of tax returns.

- 2034.2 The failure of a candidate to provide the waivers and releases required under §2034.1 may be considered by the Commission adversely to the candidate.
- 2034.3 Copies of all records received from the taxing authorities shall be provided to the candidate.
- 2035 CONFERENCES WITH CANDIDATES
- 2035.1 At the Commission's request, the candidate shall confer with the Commission in person and in private on reasonable notice.
- 2035.2 At the candidate's request, the Commission shall confer with him or her in person and in private on reasonable notice.
- 2035.3 At any conference with the candidate, the Commission may allow attendance by one (1) or more special counsel or others of its staff. The candidate may be accompanied by counsel.
- 2035.4 All members of the Commission shall endeavor to be present at any conference with a candidate, but the failure of a member to attend shall not prevent the Commission member from participating in the Commission's evaluation.
- 2035.5 If the Commission has information which, if uncontroverted, the Commission feels would raise a substantial doubt that the candidate is at least qualified, it shall inform the candidate of the nature of the questions raised.
- 2035.6 To the extent feasible, subject to the limitations of §§2004 and 2036, the Commission shall provide to the candidate in summary form the basis for doubt under §2035.5.
- 2035.7 Prior to concluding its evaluation, the Commission shall afford the candidate a reasonable opportunity to confer with it, in accordance with the provisions of §§2035.1 through 2035.4, regarding the doubt, and to submit to the Commission any material information not previously presented bearing on the candidacy.
- 2036 EVALUATION REPORTS
- 2036.1 The Commission shall prepare and submit to the President a written evaluation of the candidate's performance during his or her present term

and his or her fitness for reappointment to another term, not less than sixty (60) days prior to the expiration of the candidate's term of office.

2036.2 The Commission's evaluation report to the President of the United States shall be furnished, simultaneously, to the candidate.

2036.3 The Commission's evaluation report shall be made public immediately after it has been furnished to the President and the candidate.

2037 EVALUATION OF RETIRED JUDGES REQUESTING
RECOMMENDATION FOR APPOINTMENT AS SENIOR JUDGES

2037.1 At any time prior to or not later than one (1) year after retirement, a judge seeking favorable recommendation for appointment as a senior judge shall file with the Commission a request in writing for such recommendation. The term of such appointment shall be for a term of four (4) years unless the judge has reached his or her seventy-fourth birthday in which case the appointment shall be for a term of two (2) years.

2037.2 Contemporaneous with the filing of the request, such judge shall submit to the Commission a written statement, including illustrative materials, reviewing such significant aspects of his or her judicial activities as he or she believes may be helpful to the Commission in its evaluation of his or her request.

2037.3 A judge requesting recommendation for appointment as a senior judge not more than four (4) years subsequent to the date of his or her appointment or reappointment as a judge of a District of Columbia Court pursuant to §433 of the Self-Government Act shall submit a written statement as prescribed by §2037.2 but may limit the matters addressed in his or her statement to those judicial activities performed since the date of such appointment or reappointment.

2037.4 A retired judge who did not file a request for an initial recommendation from the Commission prior to April 29, 1985, and who is now willing to perform judicial duties shall file with the Commission not later than April 27, 1987, a request in writing for a recommendation for appointment as a senior judge and, contemporaneous with such request, shall submit a written statement, as prescribed by §2037.2.

2037.5 Not more than one hundred eighty (180) days nor less than ninety (90) days prior to the expiration of each term, a senior judge willing to continue to perform judicial duties shall file with the Commission a request in writing for recommendation for reappointment to an additional term.

2037.6 Contemporaneous with the filing of the request prescribed by §2037.5, such judge shall submit to the Commission a written statement reviewing such significant aspects of his or her judicial activities performed since the date of his or her last appointment or reappointment as he or she believes may be helpful to the Commission in its evaluation of his or her request.

2037.7 A judge who does not file a request within the time periods prescribed in §§2037.1, 2037.4 and 2037.5 shall not be eligible for appointment as a Senior Judge at any time thereafter, except for good cause shown.

2038 PHYSICAL EXAMINATION AND MEDICAL INFORMATION

2038.1 A judge seeking favorable recommendation for appointment or reappointment as a senior judge shall, contemporaneous with his or her request, submit on a form provided by the Commission a report of an examination by a physician together with a statement of such physician which attests to the physical and mental fitness of the judge to perform judicial duties.

2038.2 When deemed appropriate by the Commission, a judge seeking favorable recommendation for appointment or reappointment to a term as a senior judge shall submit to a physical or mental examination by a physician designated by it after consultation with the judge. The physician's report shall be given in writing to the Commission. Such examination and report shall be at the Commission's expense.

2038.3 At the Commission's request, a judge required to submit to a medical examination as prescribed in §§2038.1 and 2038.2 shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any medical person, medical institution or other facility regarding the judge's physical or mental condition.

2038.4 The failure of a judge to submit to a physical or mental examination or to provide waivers and releases as required by §§2038.1, 2038.2 and 2038.3 may be considered by the Commission adversely to the judge.

2038.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the judge at his or her request.

2039 RECOMMENDATION STANDARDS

2039.1 A retired judge seeking a favorable recommendation for appointment or reappointment to a term as a senior judge shall be evaluated by the

Commission through a review of the judge's physical and mental fitness and his or her ability to perform judicial duties.

2039.2 The recommendation standards are as follows:

- (a) Favorable – The judge is physically and mentally fit and able satisfactorily to perform judicial duties.
- (b) Unfavorable – The judge is unfit for further judicial service.

2040 COMMUNICATIONS FROM INTERESTED PERSONS

2040.1 The lay public, the bar, court personnel, and other judges are invited to communicate to the Commission, preferably in writing, any information they may have that is pertinent to a request for recommendation for appointment or reappointment as a Senior Judge.

2041 INTERVIEWS WITH INFORMED PERSONS

2041.1 The Commission shall interview the Chief Judge of the requesting judge's court.

2041.2 The Commission may seek pertinent information by interviews with others conducted by the full Commission, by one or more members, or by a special counsel or others of its staff.

2042 CONFERENCES WITH THE CANDIDATE

2042.1 At the Commission's request, the judge shall confer with it in person and in private on reasonable notice; and, at the judge's request, the Commission shall confer with the judge in person and in private on reasonable notice.

2042.2 At any such conference the Commission may allow attendance by one or more special counsel or others of its staff.

2042.3 The judge may be accompanied by counsel.

2042.4 All members of the Commission will endeavor to be present at any such conference, but the failure of a member to attend will not prevent his or her participation in the Commission's evaluation.

- 2043 NOTICE OF SPECIAL CONCERN AND OPPORTUNITY TO CONFER
- 2043.1 In the event the Commission has information which the Commission feels, if uncontroverted, would raise a substantial doubt that the judge is fit for further judicial service, it shall inform the judge of the nature of the questions raised and, to the extent feasible and subject to the limitation of §§2044.2 and 2044.3, the Commission shall provide to the judge in summary form the basis for doubt.
- 2043.2 Prior to concluding its evaluation the Commission shall afford the judge a reasonable opportunity to confer with it, in accordance with §2042.1, regarding the doubt, and to submit to the Commission any material information not previously presented bearing on the request.
- 2044 CONFIDENTIALITY
- 2044.1 Commission records shall not be available for public inspection, except the following;
- (a) Time and attendance data reported pursuant to the provisions of D.C. Code §§11-709 and 11-909; and
 - (b) Financial data reported pursuant to the provisions of D.C. Code §§11-1530(a)(2) and (a)(7).
- 2044.2 The record of investigations, proceedings, evaluations, and recommendations conducted or made by the Commission, as well as all financial and medical information received by the Commission pursuant to this chapter, other than the financial data referred to in §2044.1, shall be confidential, except:
- (a) when disclosed, in the Commission's discretion or as provided by this chapter, to the judge who is the subject of the information, investigation, proceeding, evaluation, or recommendation; or
 - (b) where the judge who is the subject of the information, investigation, proceeding, evaluation, or recommendation, consents to disclosure; or
 - (c) when disclosed in a proceeding, or in a Commission decision in a proceeding; or
 - (d) when disclosed in a Commission evaluation of a judge who is a candidate for reappointment, or to the President of the United States in connection therewith; or

- (e) when disclosed to the Chief Judge of a District of Columbia court in connection with a judge who has requested the Commission's recommendation for appointment as a senior judge; or
- (f) when disclosed, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission in response to a request concerning a judge whose elevation to the District of Columbia Court of Appeals or for Chief Judge of a District of Columbia court is being considered; or
- (g) when disclosed, to the extent required, on judicial review of a Commission decision or in the prosecution of a witness for perjury.

For purposes of this Rule, the record of an investigation, proceeding, evaluation, or recommendation shall include all papers filed or submitted and all information furnished to or considered by the Commission in connection therewith (including, but not limited to, the substance of any complaint by or communications with individuals or organizations, financial and medical information obtained pursuant to this chapter, depositions, grants of immunity, and the notice and transcript of proceedings, if any).

2044.3

Notwithstanding any provision of §2044.2, the identity of any individual or organization submitting a complaint, or furnishing information to the Commission in connection with an investigation, proceeding, evaluation of a candidacy for reappointment, or request for recommendation for appointment as a senior judge, shall not be disclosed to anyone, including the judge who is the subject of the complaint or information, except:

- (a) where the individual or organization consents to such disclosure; or
- (b) when disclosed in a proceeding where the individual or a person connected with the organization is called as a witness; or
- (c) when disclosed by the Commission to the President of the United States at his or her request when it concerns a judge evaluated by the Commission as "qualified" whose possible renomination the President is considering; or
- (d) when disclosed, upon request, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission, concerning a judge being considered by such Nomination Commission for elevation to the District of Columbia Court of Appeals or for Chief Judge of a District of Columbia Court; or

- (e) when disclosed, to the extent required, on judicial review of a Commission decision or in the prosecution of a witness for perjury.

2044.4 Hearings in proceedings shall be conducted in closed session, unless the judge who is the subject of the proceeding shall consent to make the hearing open to the public.

2099 DEFINITIONS

2099.1 When used in this chapter, the following terms shall have the meanings ascribed:

Chairperson – The Chairperson of the Commission, or the Vice Chairperson or Acting Chairperson designated by the Commission when acting as Chairperson.

Evaluation – The process whereby the Commission, pursuant to §433(c) of the Self-Government Act, prepares and submits to the President of the United States a written report evaluating the performance and fitness of a candidate for reappointment to a District of Columbia court.

Investigation – an inquiry to determine whether a proceeding should be instituted.

Judge – a judge, senior judge, or retired judge of the District of Columbia Court of Appeals or of the Superior Court of the District of Columbia.

Proceeding – a formal proceeding, initiated by a Notice of Proceeding, to hear and determine charges as to a judge's conduct or health pursuant to §432 (a)(2) or (b) of the Self-Government Act.

Recommendation – The process whereby the Commission, pursuant to D.C. Code, Title 11, §11-1504, prepares and submits a written report of its recommendation and findings to the chief judge of a District of Columbia court regarding the appointment of senior judges to the court.

Self-Government Act – the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198.

Special Counsel – any member of the District of Columbia Bar retained by the Commission to assist it.